

ACCOUNTANCY

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PROFESSIONAL NOTES

Committee on Company Law

The President of the Board of Trade has appointed a Committee on Company Law. Its terms of reference are: "To consider and report what major amendments are desirable in the Companies Act, 1929, and in particular to review the requirements prescribed in regard to the formation and affairs of companies and the safeguards afforded for investors and for the public interest." The members of the Committee are: Mr. Justice Cohen (chairman); Mr. Basil Catterns, the Deputy Governor of the Bank of England; Mr. Arthur Forde, a member of the firm of Linklaters & Paines, solicitors; Mr. Montagu Gedge, barrister-at-law, a member of the Chancery Bar; Professor A. L. Goodhart, K.C., Professor of Jurisprudence at Oxford, editor of the *Law Quarterly Review*; Mr. Geoffrey Heyworth, chairman of Lever Brothers and Unilever, Ltd.; Sir Edward Hodgson, a Second Secretary of the Board of Trade; Mr. Russell Kettle, a member of the firm of Deloitte, Plender, Griffiths & Co., accountants; Colonel Harold Mitchell, Member of Parliament for Brentford and Chiswick; Mr. George Thomson, a member of the General Council of the T.U.C., President of the National Federation of Professional Workers; Mr. Laurence Watson, K.C., a member of the Scottish Bar and Home Advocate Depute; Mr. Robert Wilkinson, the Deputy Chairman of the Stock Exchange; and Mr. John Wilmot,

Member of Parliament for Kennington. The issues with which the Committee will be called on to deal are discussed in our Editorial on page 206.

Evidence to be Submitted

The Committee has already met, and has decided to invite various organisations and individuals to submit their views in writing. The Committee will hear oral evidence after it has studied these written statements and any spontaneous suggestions which may be received from other sources. In addition to general recommendations, the Committee is inviting suggestions under the following headings: restrictions on use of names; shares of no par value; prospectuses and offers for sale; private companies; debentures; shares and debentures held by nominees; financial relations between companies (including subsidiary companies) and directors and former directors; balance sheets and profit and loss accounts; appointment and functions of auditors; relations of holding and subsidiary companies; shareholders' control; protection of classes and minorities; liability of companies for acts of their officials; reconstruction and amalgamation; investigation of affairs of companies; and winding-up. We understand that the Council of the Society of Incorporated Accountants has been invited to submit a statement of its views to the Committee, whose address is Romney House, Tufton Street, London, S.W.1.

Finance Act, 1943, Section 24

It is a refreshing reminder of the benefits of a democratic Parliament that the Government should have been forced to introduce an amendment in the clause of the Finance Bill dealing with the disposal of a company's stock at under its value. Readers will recall the type of transaction aimed at: A company held a large stock of a commodity which had greatly increased in value since being made or purchased. A bought the controlling shares at a price above their normal market value, and sold them to B who might then sell to C. The commodity was then sold to the last purchaser of the shares at pre-war price (normally cost or thereabouts), and realised by him at a huge profit (much more than he had paid for the shares). Liability to E.P.T. was thus avoided. The person concerned might even be beyond reach of the assessing machinery, so that income tax could not be imposed even if the transaction could be assessed as an adventure in the nature of trade. The original clause attacked such schemes by providing that the original shareholders and all the other parties indicated above should have joint and several liability for E.P.T. which would have been payable if the commodity had been sold by the company. The Special Commissioners were given power to apportion the sum among all or any of the persons, with the intention that an innocent person should not suffer.

Parliament rightly feared that innocent parties might nevertheless suffer, and the result was an addition to the clause, making apportionment mandatory. Moreover, it was pointed out that bankers and professional persons (solicitors, accountants, etc.) who had merely given professional advice for ordinary fees might be caught up in the net. It was therefore enacted that a person who advanced money and received nothing more than the normal rate of interest, and a barrister, solicitor or accountant who received no more than the ordinary professional remuneration in respect of ordinary professional services, are not to be regarded as receiving any financial benefit from the scheme and will not be within the net. A person who bought any or all of the stock at its full market value is also outside the section. Anything less would have put on professional people a burden that must be regarded as excessive. A professional man must be allowed to give freely of his skill when his advice is sought, without having to enquire to the minutest detail what use is to be made of his advice. To place him in the position of being judge and jury would be contrary to justice and an impossible situation. The curb on the trend to give the Revenue machine judicial powers is not unwelcome.

Private "Unenterprise" ?

Sir Malcolm Stewart's recent address to the Associated Portland Cement Manufacturers provides a useful commentary on Mr. Herbert Morrison's claim that private monopolies are necessarily equivalent to private "unenterprise" and must be redeemed by being converted into public monopolies. Sir Malcolm reviewed the record of the cement industry over the period 1925 to 1938, during which years prices—but not production—were in the main

controlled by the Cement Makers' Federation. Over this period, it was pointed out, the industry succeeded in reducing costs of production by 32 per cent. (notwithstanding advances in wages and in fuel, steel and stores costs), and at the same time reduced the net selling price to the consumer by 34 per cent. "The suggestion that restriction by industrialists follows the control of selling prices certainly cannot be applied to the cement industry or to our company," said Sir Malcolm; "indeed, the reverse is the case. During the period reviewed we continuously expanded our production capacity and kept it in excess of the growing demand, fostered by giving the consumer free technical assistance and education through the Cement and Concrete Association as to the means of increasing the uses of cement." Even this record is not in itself sufficient to disarm the critics of monopoly, whose case rests upon quite different grounds; but it is quite certain that a public monopoly controlling the industry could not have produced any better results and would quite probably not have equalled those actually achieved.

Four Hundred Years Ago

August 14, 1543, is a date of importance in the history of book-keeping, as it marked the production of the first book on the subject by an English writer. The author was Hugh Oldcastle, schoolmaster in Mark Lane, London, and his work was published under the title: "Here ensueth a profitable treatyce called the instrument or booke to learne to knowe the good order of the keypyng of the famouse reconyng called in latyn Dare et Habere, and in Englyshe, Debitor and Creditor. . . ." The book appears to have been an adaptation of the famous "Summa de Arithmetica, geometria, proportioni et proportionalita," in which the principles of double entry were first set forth by Lucas Pacioli at Venice in 1494. Oldcastle's work in its turn formed the foundation for "A Briefe Instruction and maner how to keepe bookes of Accompts," by John Mellis, 1588, a copy of which is among the collection of early works on book-keeping in the Library at Incorporated Accountants' Hall. It is not known whether any copies of Oldcastle's book are extant.

The Rating System of Scotland

A committee appointed by the Secretary of State for Scotland is to review, with reference to post-war requirements, the law and practice in Scotland in relation to (1) The valuation and rating of hydro-electric undertakings (with special reference to the recommendations of the Committee on Hydro-Electric Development presided over by Lord Cooper); (2) the effect of the existing system of rating on the provision of houses, and the question whether it is practicable and desirable to limit the maximum amount payable in respect of owners' rates; (3) the liability for rates in respect of empty or unused premises. The Chairman of the Committee is Mr. J. C. McIntyre, M.C., K.C., Dean of the Faculty of Advocates, and one of the members is Mr. J. D. Imrie, C.B.E., J.P., F.S.A.A., City Chamberlain of Edinburgh.

The Professions and Post-war Employment

It was decided last March to centre in the Appointments Department of the Ministry of Labour and National Service the arrangements for assisting persons with qualifications for the higher posts in the professions, industry and commerce to find opportunities of suitable employment in the period of re-settlement after the war. The Minister of Labour and National Service has now appointed a committee under the chairmanship of The Right Hon. Lord Hankey, G.C.B., G.C.M.G., G.C.V.O., "to consider and report upon the arrangements which should be made to facilitate the employment after the end of hostilities of men and women qualified to undertake responsible work in the professions or elsewhere, with particular reference to (a) the organisation, premises and staff of the Appointments Department of the Ministry of Labour and National Service, and (b) the arrangements which should be made for co-operation between the Appointments Department and other organisations and institutions (including professional, industrial and commercial organisations) and universities, at home and abroad." Members of the accountancy profession will welcome the appointment as a member of the committee of Mr. H. M. Barton, Vice-President of the Institute of Chartered Accountants. The secretaries are Mr. H. F. Rossetti and Mr. F. M. H. Markham, Ministry of Labour and National Service, Sardinia Street, London, W.C.2. An Interdepartmental Committee upon Further Education and Training is working to ensure that the Government's educational and training arrangements are closely related to the prospect of employment at home and abroad, and to co-ordinate the facilities to be provided outside and inside the Services. Both committees will have close contact with the Governments of Canada, Australia, New Zealand and South Africa.

The County of London Plan

"Practical visionaries" is the term which Lord Latham, Leader of the L.C.C., applies to the authors of the County of London Plan, which has been prepared for the London County Council by Mr. J. H. Forshaw, architect to the Council, and Professor Patrick Abercrombie, Professor of Town Planning at University College, London. They have not been afraid to propose drastic changes where these seem necessary, but their proposals are framed with due regard to the essential characteristics of London and its existing local communities. The plan relates to the area of the County Council, and the four major defects which it is designed to remedy are "traffic congestion, depressed housing, inadequacy and maldistribution of open spaces, and finally the jumble of houses and industry which showed itself in a general tendency towards indeterminate zoning." It is assumed that legislation will be passed on the lines of the Barlow, Scott and Uthwatt reports. Through traffic is to be rigorously excluded from areas to be classified as "precincts," such as the Whitehall area of Westminster, the Royal Parks, the University area, the Inns of Court and the Temple. A bold development scheme for the river frontages,

especially on the south bank, would give the public access to 30 per cent., instead of 9 per cent. of the river banks within the County area. New road bridges at embankment level are proposed at Charing Cross and at the Temple. The plan as a whole is now to be considered by the London County Council, and it has been published in book form by Macmillan and Co., Ltd., at the price of 12s. 6d.

Frustrated Contracts

Legislation has now been introduced to deal with the question of frustrated contracts. In 1942, it will be recalled, the House of Lords reversed a rule that had been accepted law for nearly forty years by permitting recovery of moneys paid under a contract for delivery of machinery to Gdynia, subsequently frustrated by the enemy occupation of that port. Though the Lord Chancellor held that the previously accepted ruling in *Chandler v. Webster* was wrong, he nevertheless pointed out that the reversal of this ruling in the Polish case might lead to injustice if expenditure had been incurred under the contract by the party obliged to refund the sums received as deposit. This point is covered in the Law Reform (Frustrated Contracts) Bill, which provides that where a contract is frustrated "all sums paid or payable to any party shall . . . be recoverable from him as money received by him for the use of the party by whom the sums were paid," with the proviso that if expenses have been incurred the Court may allow the relevant party "to retain or, as the case may be, recover the whole or any part of the sums so paid or payable, not being an amount in excess of the expenses so incurred." In estimating expenses, the Court may include such sum as appears to be reasonable in respect of overhead expenses and in respect of work or services performed personally by the said party. Effect shall be given, notwithstanding the new enactment, to any specific provisions of the contract relating to frustration. Expenditure in connection with insurance is specially dealt with in the Bill.

Farm Finance

The question of capital for agriculture has again been the subject of correspondence in the Press. One writer, giving examples of the very large proportion of gross income absorbed by taxation in some cases, argued that "unless the craziness of present taxation is realised, the production of food must decrease," on the ground that additional capital is needed to expand production and the only source from which this can be provided is profits. In reply, it has been pointed out that the Inland Revenue allows depreciation on existing implements, and, so far as additional machinery is concerned, "if a farmer is not possessed of the capital with which properly to equip his farm, let him either borrow on what are to-day very fair terms, or make way for another who is so possessed." While nobody would deny that high taxation gives rise to difficulties of various kinds, it is certainly difficult to see that farming is more hardly treated than other industries, and even more difficult to believe that a decline in output is threatened on account of these financial problems.

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COMPANY LAW AMENDMENT

For a considerable time it had been expected that a Departmental Committee would be appointed to review the law and practice in relation to companies. In the ordinary course of events such a review is necessary at least once in every fifteen or twenty years. The recent announcement of the appointment of a Departmental Committee by the President of the Board of Trade was hardly expected at this juncture, but is nevertheless to be welcomed.

The terms of reference and the personnel of the Committee are indicated on page 203 of this issue. The Chairman is Mr. Justice Cohen, who was recently elevated to the Chancery Bench. His appointment will command wide respect by reason of his experience in company practice, and his judicial outlook. The personnel of the Committee represents many points of view, but we should have thought that it might have comprised more than one member of the accountancy profession.

In the interval since the report of the Greene Committee in 1926, company practice has been influenced by a variety of circumstances. The disastrous boom flotations in the pre-1929 years, followed by the unparalleled economic depression, undoubtedly produced a chastened frame of mind, intensified no doubt by certain proceedings in the Courts. The structure of large companies, and especially of holding companies and their controlled subsidiaries, was not merely the by-product of financial technique, but the application of the fashionable doctrine of rationalisation. For the time being, the war and Government control have completely stopped fresh capital issues, and there is therefore to some extent a hiatus in the development of public companies. But probably the most persistent feature of the past twenty years has been the increasing demand for publicity in the affairs of companies, both by larger shareholders and by small investors, and especially by the financial press. While it cannot be said that the apathy of shareholders has become a thing of the past, probably small investors take more interest in the affairs of companies of which they are shareholders than hitherto. The Stock Exchange has increasingly assumed the function of a guardian of investors, and has made certain definite pronouncements affecting company practice which have received wide support. In the past the main emphasis in company affairs has been on the relation of directors, shareholders and the public generally; but in the present trend of economic policy, it is clear that new factors are in-

jected in relation to the position of employees and of consumers, to the paramount importance of maintaining key industries and to the general interest of the public.

The continuous discussion on the affairs of companies, representing many points of view, has been mainly focused on the published accounts of public companies. This discussion, and the influence of public and financial opinion, has led, by a voluntary process, to the accounts of companies affording greater information than in the past; but still there remain considerable gaps, and this aspect undoubtedly calls for investigation by the Committee. The method of appointment and the scope of the duties of auditors of public companies will undoubtedly receive careful consideration. Some enterprising minds in the profession have recently suggested broadening the scope of auditors' duties, which would seem to imply their impinging on the sphere of management. It may be that the profession will not endorse that view, but will generally call for the strengthening of the independence of auditors, and not the imposition of official control.

The reformed company law must undoubtedly be directed to the elimination of abuse and unsatisfactory flotations. Business risk there must be, but this should not be accentuated by financial impropriety. Due weight must be given to the affairs of companies which are well-managed and properly conducted, and the directors and managements of companies should be afforded the greatest measure of freedom consistent with the reasonable protection of the public, whether as shareholders, as employees, or as consumers.

As regards the accounts of companies, it is likely that much of the discussion will be directed to the position of subsidiaries, their accounts, and consolidated accounts of holding companies. This part of the subject is closely linked with the question of secret reserves and balance sheet values. This is a very complicated problem, affected by changes in the level of prices, and always by the elusive conception of value. Paucity of information in profit and loss accounts, even in modern practice, is still too common, and we hope that the minimum to be prescribed by law will give the shareholders and the public reasonable information. The plea of necessary secrecy from the point of view of competition has lost much of its validity.

We are reminded that many of these questions were dealt with in a report issued by the Society of Incorporated Accountants in 1932, and in the subsequent discussion to which Mr. Henry Morgan, the then President of the Society, made a notable contribution.

The affairs of private companies will probably be reviewed by the Committee, and we hope that their interests and needs and the elimination of abuses will not be submerged by the important considerations in regard to public companies. We believe that the Departmental Committee has an extensive sphere of work before it, and we have no doubt that the accountancy profession will contribute by evidence to the Committee.

Full-Employment and Industrial Organisation

By ROLAND BIRD

Recent months have given us a profusion—perhaps a profundity would be a better collective noun—of plans for the post-war organisation of industry. They have been informed with one central purpose—so to organise our economic affairs after the war that mass unemployment and industrial inefficiency will belong to the past. Now that we have reached “the beginning of the end” of this war, it is none too early to consider these problems; their solution, after all, may prevent the beginning of the next. Of course, not all the solutions which are offered are in agreement. It would naturally be too much to expect that such diverse bodies as, say, Lever Brothers and Unilever, the Nuffield College Conference or P.E.P., would offer identical formulas for economic reconstruction. The Nuffield College statement* perhaps follows the middle course between P.E.P.’s emphasis on central planning and Lever’s presentation of the views of a progressive and far-sighted industrialist. The Nuffield Conference represents a combination of the talents—industrialists, economists, academic and public figures—which might be expected to find the recipe. Perhaps the result of their deliberations is not vintage Beeton, but, after all, that masterpiece was not written by a committee of 33. Indeed, Nuffield’s statement suffers here and there from the defects of compromise; it is apt to become rotund just when one seeks precision, and it appears sometimes to give more attention to forms than to policies.

Employment

It would, however, be grudging in the extreme not to recognise the worth of the basis of agreement which the Nuffield Conference has reached. The industrialists have proved enlightened, and the economists open to compromise. They have started from the premise that after the war a high level of employment will be both an economic and a moral necessity; we must achieve the nearest possible approach to full employment at a high and steadily rising standard of living. To do so, we must solve the problem of the trade cycle; we must ensure that British industry is fully adaptable to changing techniques and changing markets; and we must, as a community, do what any person of sense does for himself, namely, produce as much as possible for the least real effort. In other words, there must be no unemployment beyond that of labour in transition to new jobs, no depressed areas, and no toleration of industrial inefficiency. These objectives will be thwarted by all tendencies towards a rigid and ossified industrial structure, in particular by the retention of fixed capital which has outlived its day, and by the insistence of trade unions on practices which impede the introduction of new methods. Promise capital reasonable prospects of profit in new industries and new equipment, and promise labour the prospect of alternative employment; these assurances should promote the necessary

flexibility and enterprise which British industry will require in the post-war world.

That is a broad statement of the basis of the Nuffield report. What does it involve in detail? For the attack on cyclical unemployment, the systematised application of public works to make good any deficiency of investment in capital goods, in measures designed as productive ventures and not mere relief projects. The instruments of control would be a National Development Board (armed with wide powers over public and private investment, both at home and overseas), acting on facts compiled by a Central Statistical Office. A separate capital budget is proposed for expenditure incurred in maintaining the level of investment. For economic planning in the wider sense, a Minister of National Development is proposed. He would be a senior minister without departmental duties, presiding over a committee of departmental Ministers, assisted by an expert staff, and responsible for the co-ordination of all matters of economic development and for the capital budget. We should need a new technique of public administration in these fields—in particular, the Treasury and its methods are specifically warned off. But, having made the Government responsible for the public direction of capital expenditure, the Nuffield College statement emphasises that industry must be left to do its job in detail without interference in its day-to-day operations.

At this point, the report turns to consider the problem of industrial organisation after the war. It distinguishes three main industrial groups: key industries which serve a wide range of other industries and whose development plays a large part in the general level of investment activity; other major industries which tend to fall under the predominant influence of a small number of concerns; and all other industries. Within the first group—we might call it the public utilities and natural monopolies group—the Report strongly favours control by Public Corporation. Within this field, too, it urges co-ordination of transport and suggests, though very cautiously, that coal mining might also be included. These conclusions would be generally agreed, though it is hardly necessary to insist on change to achieve mere purism of form, when effective control already operates—as, for example, in the case of the railways.

Public Industrial Boards

It is, however, the second group which most closely concerns the Nuffield Conference—the incipient monopolies as we might call them. To check such monopolistic tendencies, Public Industrial Boards are proposed. These Boards would consist of representatives from the industries concerned, led by an impartial chairman. They would not be trade associations in the usual sense: their job would be to secure the acceptance of better organisation within the industry and to interpret the needs of the State to the industry; their object the increased efficiency and flexibility of the industry; and their

* “Employment Policy and Organisation of Industry after the War.” (Oxford University Press, 2s.)

policy that of the open door, without limitation of output or fixing of prices. The Report argues, more delicately and persuasively than some recent condemnations of monopolies and trade associations, that the case for industrial self-government and the case for monopoly are two quite separate things. Certainly, a merely condemnatory attitude towards the trade association is scarcely responsible unless, at the same time, it urges that efforts must be made to provide a context within which trade can expand. The growth of restriction and monopoly in the pre-war decade itself owed much to under-employment of capital and labour, and to condemn these practices without urging a proper employment policy is mere self-righteousness. The Nuffield statement further proposes that where restrictions on entry, output or prices are thought to be necessary by an Industrial Board, they should not be sanctioned "by the appropriate Minister" until the case has first been argued in the open before an Industrial Tribunal. And in the international sphere, firms and industries will require the sanction of the Minister before entering into cartel arrangements.

In this section the Report is inclined to become tentative just when a more detailed discussion of the industrial boards would be illuminating. It admits concessions which might give the boards the appearance of the familiar trade associations, though they would technically be subject to a machinery of control. The main question, however, is whether the boards could successfully steer a middle course between mutual assistance for the industry and concern for the public interest. Would the independent chairmen be sufficiently authoritative and knowledgeable to give these administrative forms real life? Would it not be preferable to make permission to introduce any act in restraint of trade less easily accessible, since powerful industries are also powerful pleaders? But it is a good deal to have evils recognised and named. Nor should we forget that a capital budget and scientific public investment policy are proposals which were novel a decade ago, even though they are widely accepted to-day.

Perhaps the Nuffield Report is too sanguine when it anticipates a new spirit in industry. Practices tainted with monopoly may not easily be eradicated, whether they come from the side of capital or of labour, so long as "full employment" remains a doctrine rather than a guarantee. We cannot be certain that the technique of central control of investment has been completely worked out—even to-day it is, in many respects, in a rudimentary stage, and the report says little in detail on the application of credit policy and other indirect means by which the Government can foster capital investment. But certainly, "full employment" is a better slogan on which to approach the labour unions than the occasional indiscreet references to "discipline" which are apt to fall from City editors' pens. Flexibility on both sides will demand a clearer idea of the nature of the national income and its division between the factors of production and new investment. Profits and money wages must be sufficient to evoke enterprise, but the true nature of the production problem is more easily understandable when

expressed in real terms, and even to-day such conceptions are not in common currency. Flexibility will be essential if capital and labour are to rid themselves of defeatist and defensive policies of restriction, but even granted the expectation of full employment of capital and labour it will have to be worked for—even fought for—in detail.

International Trade

There is one major omission in the Nuffield report which is to be filled later. Owing to lack of time, the Conference has been unable to deal with the international conditions which must be fulfilled if national prosperity and international economic security are to be achieved. This is a significant, though temporary, defect when the importance of British exports, overseas investment and finance are considered. Many of the conclusions regarding remedies for cyclical and structural unemployment at home must be greatly affected by what may be happening overseas to price levels, exchange policies, tariffs and industrial self-sufficiency. We are now a closed economy, and we are bound to retain many of the aspects of such an economy for some time after the war, particularly controls of trade and capital movements. But we are unlikely to remain so isolated from international economic trends, at any rate after the first phases of post-war economic rehabilitation, that our domestic economic policy will be unaffected by these happenings; if we mismanage our affairs, it is unlikely that no harmful international consequences will ensue. International maladjustments, both cyclical and structural, will themselves need proper correction before any single State can be assured of success in its own task of economic control and advancement. It is precisely in the international sphere that British industry is apt to labour under an inferiority complex, and to turn for safety to a sheltered home market. There is no fundamental reason why this should be so, provided that the efficiency of British production is raised, as it can be and should be. But stability and progress of the British economy, for which the Nuffield conference offers its plan, cannot ultimately be achieved without stable world conditions and expanding international trade.

There is a rather "dated" atmosphere about the Nuffield report, a suggestion of orthodoxy and convention, despite its progressive outlook. Possibly the classic statement of the case which the report argues can be found in the following passage:—

"Apart from the necessity of central controls to bring about an adjustment between the propensity to consume and the inducement to invest, there is no more reason to socialise economic life than there was before. . . . The central controls necessary to ensure full employment will, of course, involve a large extension of the traditional functions of government. But there will still remain a wide field for the exercise of private initiative and responsibility. . . . If nations can learn to provide themselves with full employment by their domestic policy there need be no important economic forces to set the interest of one country against that of its neighbours."

These words were written by Lord Keynes in 1935. Eight years is not a long time for them to pass into established thought.

Internal Equilibrium

By F. S. BRAY, Chartered and Incorporated Accountant

Equilibrium is a conception which was more familiar to economists than to accountants, though—somewhat tardily, perhaps—it now seems to be making its way into professional accounting discussions. The term "equilibrium," with its implication of balance, is one which should come to have more and more significance in the development of accounting technique. To a mind trained in the practice of accounts it at once suggests either an equality of revenue and costs (treating profit as an item in costs) or an equality of net assets and proprietorship. This, in itself, is important as leading to the possibility of determining the conditions which might satisfy an accounting conception of a position of internal equilibrium for a particular business. The suggestion is put forward here that those conditions are an ability to earn normal profits allied to soundness of capital structure.

It is quite apparent that there can be nothing necessarily rigid or arithmetically precise about the assessment of either normal profits or soundness of capital structure; yet, if accounting documents are to serve their purpose, both are features which should be fairly readily discernible. This is one of the reasons why problems touching upon design and valuation, in relation to published accounts, are important.

Normal Profits

What is meant by normal profits? And again—what is meant by soundness of capital structure? In attempting to find possible lines of solution to the first question we at once meet a difficulty. At the present time there is no uniform accounting measurement of income; this is one of the most urgent problems confronting accounting research and one which should be investigated at the earliest possible moment.

Under the pressure of a war economy we have seen latterly some attempt to equate pure profit to an amount representing a reasonable rate of return on the capital employed in a business. It is true that this has been done with the intention of restricting the profit on certain Government contracts by setting up a ratio between capital and turnover; nevertheless, the whole notion may put us in the way of comprehending that elusive concept—normal profits.

It will be urged that the rate of return on capital varies with different industries, but it seems that this view tends to confuse pure profit with the reward to the entrepreneur for taking the risks implicit in most business enterprises. It is the risks which vary with different industries. From the point of view of accounting technique it may be possible to regard normal profit as the pure return on the capital employed in a business and to shift all such elements as the reward for taking risks, and the return to effective management, on to costs rather than conceive them in profit. Such a step, however, in no sense avoids the difficult problem of measuring

such items, but it may be urged that sooner or later attempted uniformity in the measurement of income must be seen to imply uniformity in the measurement of costs. Thus, there can be no real abstraction of a concept of normal profits until some acceptable practice has been settled in regard to depreciation and such like provisions.

Costs

Reserves created to preserve long-run stability are in one sense *costs* which current operations must bear if an enterprise is to guard against the shocks of changing conditions in such a way that it will have time to rearrange itself effectively to meet changes which are likely to be relatively permanent; only so will a firm be in a fair state to go forward in the way of development. Cost reserves are also needed to smooth out short-period variations, e.g., temporary losses due to changing price-levels.

An ability to earn normal profits thought of on the lines we have discussed assumes effectiveness in the arrangement of costs. It is becoming increasingly apparent that such effectiveness can be best maintained under the influence of a system of pre-determined or standard costs, as they are somewhat misleadingly termed, supported by a system of budgetary accounts to be later checked against the actual results revealed by financial accounts. In the last analysis it is the financial accounts which answer the problems present at the beginning of a production period, and it is the budgetary accounts which attempt to foreshadow what those financial accounts are going to show. In their turn, the standard costs entering into budgetary accounts are an attempt to estimate real costs at an efficient level of production. All such questions as these assume a measure of uniformity and a precision in analysis and classification for both costs and revenue.

Capital Structure

For an enterprise to be sound in structure its capital should be adequate to cover the book values of its fixed revenue-earning assets and to provide a reasonable margin for working capital to finance current operations: a margin which should be maintained in proper ratio to the scale of output (cf., the advantages of a working capital budget). This opens up important questions pointing to the need for uniformity in the accounting principles of valuation to be applied to both fixed and current assets, treating the former as a store of production costs. It is clear that sooner or later some attempt must be made by the profession to determine a code of rules on questions of balance sheet valuation which are vital to the assessment of capital structures.

Business enterprise is now working within the hard and somewhat arbitrary framework of a war economy and the conditions of the future are but vaguely discernible, yet it is a matter of the greatest importance that firms should retain a forward-looking view which has regard to the accounting

conditions making for internal equilibrium in a post-war economy. In some cases retainable profits may be slender; nevertheless, an attempt should be made to provide for the abnormal costs which are incidental to war by a charge against current operations, if capital structures are to weather the storm of post-war conditions. So far as possible, care should be taken to see that current operations bear their proper charges for such items as accelerated depreciation, accelerated obsolescence and deferred maintenance, and that some kind of current provision is made to cover anticipated post-war rearrangement and alteration costs. Thus, post-war adjustment

costs should be met now and not left over in such a way as to damage the soundness of post-war capital structures.

• External Equilibrium

And, lastly, it should not be overlooked that a business enterprise must also stand in a position of external equilibrium if its own internal equilibrium is to be preserved. By "external equilibrium" is meant that situation in which a firm may be said to be engaging its proper share of the available market for its products having regard to the size, conditions and circumstances of that market and the structure of the individual enterprise.

Statutory Disqualification of Auditors—I

[CONTRIBUTED]

Section 133 of the Companies Act, 1929, disqualifies certain persons for appointment as auditors of a company incorporated under that Act or any of its statutory predecessors. It does this by enacting, in Sub-section (1), that none of the following persons shall be qualified for appointment as auditor of a company—(a) a director or officer of the company; (b) except where the company is a private company, a person who is a partner of or in the employment of an officer of the company; (c) a body corporate. Sub-section (2) of the same section, the effect of which is long since spent, saved the position of a body corporate, acting as auditor under an appointment made before a specified date, which was the date on which the Companies Act, 1928, was passed; and Sub-section (3) of the section made the very necessary proviso, in the application of the section to Scotland—by the law of which country a partnership firm is an entity separate in law from the individuals composing the firm—that the expression "body corporate" should not include a firm; thus precluding the possibility of any contention that the section had, by Sub-section (1) (c), effected the wholesale disqualification for appointment as auditors of a company incorporated in Scotland of every firm of accountants practising in Scotland.

The disqualification, for the purpose in hand, of directors or officers of the company concerned was first enacted by Section 21 (3) of the Companies Act, 1900. But as regards the disqualification of partners or employees of directors or officers of the company, or of bodies corporate, for appointment as auditors of a company of the class mentioned above, no statutory provision was operative until the Companies Act, 1929, came into force. The disqualification of bodies corporate for such an appointment was first enacted by Section 85 (1), and that of partners or employees of directors or officers by Section 86 (1) of the Companies Act, 1928, which never came into operation, except for certain purposes quite unrelated to the present topic, and was repealed by the Act of 1929. It is not proposed to deal further in this article with the disqualification of a body corporate for the purpose mentioned.

The Policy of the Disqualifying Provisions

The policy underlying the enactment of the disqualifying provisions in question, so far as they are here dealt with, and the mischief against which these provisions were plainly directed, are not far to seek. They are made quite clear by the most cursory consideration of the main lines of the duties of an auditor. In this connection it is not necessary to look further than Section 134 of the Companies Act, 1929, and it is sufficient to deal with those duties as they are stated in that section or fairly arise out of its provisions. Stated in their lowest terms, those duties require the auditors, not merely to verify that the balance sheets laid before the company in general meeting are in accordance with the entries actually to be found in the company's books, but to take reasonable care to satisfy themselves that the company's books disclose its true financial position; to require from the company's directors and officers all the information and explanations which they, the auditors, in their discretion consider necessary to enable them to satisfy themselves that the company's books, and the balance sheets based on those books, do, in fact, disclose the company's true financial position; to make to the members, in accordance with the specific requirements of the section, their report on the accounts examined by them and on every balance sheet laid before the company in general meeting during their tenure of office; and to report specially to the members any circumstances ascertained by them which, in their judgment, the members must know in order to appreciate the true financial position of the company. This, of course, does not purport to be more than a rough and inadequate summary of the main duties of auditors, but it will suffice for present purposes. These duties are owed by the auditors to the members, and their due discharge is plainly necessary for the proper protection of the members. Indeed, it is not too much to say that the statutory provisions on this subject disclose no trace of any duty of the auditors to the directors as such, apart from the auditors' duty, necessarily to be implied, to act towards the directors fairly and in good faith.

Independence of Auditors

It is manifest that duties of this character require for their proper performance that the auditors shall be independent of any control, direct or indirect, by the directors or officers of the company, or the possibility of any undue or improper influence on their part. The proper discharge of such duties may demand insistence by the auditors on information or explanations which the directors or officers concerned may be unwilling to give, or disclosure to the members of matters which the directors or officers consider should not be disclosed, on grounds which, so far as concerns the directors or officers, may vary in the moral scale from views of policy, which at the worst are unjustified or misconceived, to motives which may be nakedly fraudulent. Such functions cannot be entrusted in general to persons whose duty to discharge them honestly and fearlessly may come into conflict with their personal interests or those of others in a position to dominate or influence them. The statutory disqualifications under consideration are in line with (and give at least partial effect to) the well-established and widely applied rule of equity that a person bound to discharge duties to others should not, where it can be prevented, be put or allowed to put himself in a position in which his interest, direct or indirect, may be in opposition to the proper discharge of those duties, or may weaken or destroy the impulse to perform them faithfully. This, it is conceived, is in reality the policy underlying the statutory disqualifications, and indicates the mischief against which they are designed to guard.

It is true that the statute places in the hands of the company in general meeting the power to appoint the auditors. But the student of the working of company enterprise, acquainted with certain manifestations in practice of the art of manipulating the votes of a majority, may be pardoned for exhibiting no surprise that the legislature, by steps however halting, has come to consider that power of the members an inadequate safeguard in the matter.

It is almost too obvious to require mention that the statutory provisions in question merely impose disqualifications, and nowhere require the possession by auditors of positive qualifications for their duties.

Who Are "Officers" of a Company?

A considerable body of case law has dealt with the question who, in particular circumstances as to their employment and duties, are or are not to be regarded as "officers" of a company. It does not seem possible to generalise these decisions, so as to extract from them an entirely adequate definition of an "officer" of a company. There can be no doubt that the secretary or manager of a company is an "officer." So, too, may be a liquidator of a company in liquidation, and in many cases the auditors of a company have been held to be its officers. The difficulty is usually as to persons holding positions of lesser importance or with less clearly defined functions. To constitute a person an "officer" of the company, he must, it seems, be appointed to his position by the company or its managing body—apart from special cases where an

appointment is made under statute by the Court or the Board of Trade—and paid by the company. He must obviously possess a status of appreciable importance, and discharge duties which involve the exercise by him of a certain degree of discretion and responsibility. The mere rendering of professional services to the company from time to time, even under a permanent retainer or employment, does not necessarily constitute the person rendering those services an "officer." Thus, the company's solicitor employed to act for it from time to time in the ordinary way is not an officer of the company, though a solicitor employed by the company, in its full-time employment at a salary, to transact all its legal business may be an officer (*Re Liberator Permanent Benefit Building Society*, 71 L.T. 406), though, in that case, the solicitor also held the position of financial manager of the society, and this seems to have been relied on as a ground of his decision by one of the judges in that case. A company's bankers are not its officers (*Re Imperial Land Co. of Marseilles*, 10 Eq. 298), nor are trustees merely holding particular property for the company (*Cornell v. Hay*, L.R. 8 C.P. 328), or trustees for debenture-holders (*Astley v. New Tivoli*, 1899, 1 Ch. 151). On the other hand, in one case (*Re British Guardian Life Assurance Co.*, 1880, W.N. 63), trustees to receive, and invest for the benefit of policy-holders of an insurance company, certain portions of the premiums paid by the policy-holders were held to be officers of the company. Employment on a particular occasion only by the company, even on matters of difficulty and importance, does not constitute a person so employed an officer of the company. Thus, in *Openshaw v. Fletcher* (32 T.L.R. 372) an expert employed to investigate and report on a company's business was held not to be an officer, and a similar result was reached in *Re Western Counties Steam Bakeries & Milling Co.* (1897, 1 Ch. 617), where accountants were called in on a particular occasion to audit accounts and prepare a balance sheet, but had not been appointed the company's auditors; though it can hardly be doubted that accountants regularly employed to keep a company's books of account, though not appointed its auditors, would be held to be officers of the company. Again, in an Irish case, the editor and chief reporter of a newspaper were held not to be officers of the company owning the newspaper (*Murray v. Northern Whig, Ltd.*, 46 I.L.T. 77), and the like would seem to be true of a person employed purely in a professional capacity, however important, in connection with a trade or business carried on by the company, and having no concern with the administration of the company, as, for instance, an architect employed by a building company, or a chemist by a chemical manufacturing company. Instances might well be multiplied, but they do not enable one to frame an exhaustive definition of an "officer" of a company, and in doubtful or border-line cases the question becomes one of fact and degree, depending on the special circumstances of the particular case.

(To be concluded)

Sir William Jowitt on Reconstruction

Sir William Jowitt, K.C., M.P., Minister without Portfolio, addressed a well-attended meeting of various professional societies held at the Crane Hall, Liverpool, in June on "Aspects of Post-War Reconstruction." The chairman was the Lord Mayor of Liverpool (Alderman R. Duncan French, F.S.A.A.).

The Lord Mayor observed that the gathering was a very representative one. There were present the Mayors of Bootle, Birkenhead and Wallasey, with the Town Clerks of those boroughs and of Liverpool, the Recorder of Liverpool (Mr. E. G. Hemmerde, K.C.) and the Vice-Chancellor of Liverpool University (Sir Arnold McNair). The sponsoring societies were the Incorporated Accountants' District Society of Liverpool and the Liverpool branches of the Insurance Institute, the Bankers' Institute, the Chartered Institute of Secretaries and the Institute of Chartered Accountants. A large number of other professions were also represented, including architects and surveyors, barristers, engineers, and estate agents.

The Future of Accountants

Sir William Jowitt observed that the profession of accountancy, which was graced by the Lord Mayor, was one of great importance. Accountants were the doctors of industry. The word "accountant" meant anything from the turf accountant upwards—or should he say downwards? (Laughter.) They had their great organisations, but there was no adequate power of discipline over members of the profession. If barristers misbehaved themselves they would be disbarred; solicitors and doctors could be dealt with similarly. He would like to see a system whereby the accountancy profession was given a much higher power to look after its own members. Even among accountants there were, he suspected, some black sheep. He had been behind the scenes doing a little work on this, and a scheme had been propounded, to which all the representatives pretty well agreed, and was now being considered by the Board of Trade. He hoped they would hear something very soon.

Reconstruction in Industry

Reconstruction necessarily covered a very wide field and it was impossible to think of reconstruction in this country in isolation from the rest of the world. He believed that until they could see much more clearly the shape of things to come the armed forces must be retained, and for a time after the war it would be necessary to continue with some form of conscription. Although we might have councils of Europe and of Asia, he hoped none of those councils would be independent of some world council if such a council was set up. International co-operation was a very delicate plant, and we must not think we could produce straightaway the finished tree. It was important also not to get the idea that international co-operation meant that we could rest on our oars and become passengers in the boat which other nations would row.

With regard to demobilisation, the principle must be age and length of service. He would like to promulgate a scheme so that it might receive the fullest criticism and so that the army would realise they were trying to be fair. Some industries might be kept on war work

while others transferred to articles suitable for peace, and some firms might complain that their rivals were capturing the market. That was a situation which was going to call for great restraint, tolerance and discipline.

It was idle to imagine that all controls could be taken off after the war. There would be a shortage of raw materials and food, not only in this country but throughout the world, and it was essential that what there was should be fairly shared. He hoped we should not have a boom after the war. There was nothing statesmen could do to ease the employment situation more than to try and level out the trade cycle.

It was hoped to build something like 400,000 to 500,000 houses a year, and plans had been made to employ 1½ million men. He wanted good houses, fitted with electricity and labour-saving devices.

Were we going to go back to the *laissez-faire* individualisms of the last century, or were we going to have the strictly controlled economy of Russia, because both brought great prosperity? He thought we should probably have some compromise between the two. He hoped we should not plan so as to take away from people all incentive to enterprise and initiative and that we should not make people like a lot of ants in an ant-hill. But there must be much greater central direction and much greater control than heretofore.

Health and Science

After the war we should be much poorer. He welcomed the Beveridge scheme, and particularly the proposals for children's allowances and for a far greater measure of free meals in schools. He also welcomed the suggestion of a comprehensive medical service, although he did not want to see doctors state lackeys. After health came education, and he hoped Mr. Butler's Bill would be revealed to the world this summer. Education should be extended at both ends, and much more could be done in the way of nursery schools. The school-leaving age should be raised to fifteen forthwith and to sixteen as soon as possible.

Sir William pointed out that there were only eight hundred architects and surveyors and civil engineers concerning themselves with town and country planning, and the country would want many more in the future. He had no doubt there was room for reform in the law, but the English common law had been of very great value in the resettlement of the world.

There was going to be a new Foreign Office. He thought the Foreign Office and the consular service must take a more active part in helping British traders, and for that work we should want very good men. But the real basis on which our future depended was the application of science. Lord Woolton had done magnificent work at the Ministry of Food and he had called to his aid nutrition experts. If this country was to get on in the future we must have a more scientific outlook and spend more money on research.

Members of all professions had a part to play in trying to secure this new outlook and this new drive. There was a great danger of industries trying to make good with obsolete plant. The scientific outlook, the drive, the energy of youth, the determination of Britons all over the world, would, he was confident, enable us to come through and build a better world than we knew in the past.

Incorporated Accountants in Yorkshire

The Yorkshire District Society of Incorporated Accountants held a reception and luncheon at Leeds, on July 9, for the visit of the President of the Society of Incorporated Accountants (Mr. Richard A. Witty) and the Secretary (Mr. A. A. Garrett). Mr. Robert E. Starkie, President of the District Society, presided, and the company included Mr. N. R. Dickenson (President of the Leeds and Bradford District Society of Chartered Accountants), Mr. A. I. C. Forster (President of the West Yorkshire Association of Certified and Corporate Accountants), Colonel B. Mouat Jones, D.S.O., M.A. (Vice-Chancellor of Leeds University), Mr. H. H. Tomlinson, Mr. W. F. Jackson (Principal Inspector of Taxes in Leeds), Mr. G. H. Austin, B.A., Ph.D. (Principal of Leeds College of Commerce), and Mr. T. W. Dresser (Hon. Secretary of the District Society).

The Chairman (Mr. Robert E. Starkie) proposed the toast of "Mr. Richard A. Witty," to whom he extended a hearty Yorkshire welcome. The Society had been fortunate in a succession of Presidents who had carried out their duties with great distinction. It was no secret now that the greatest problem with which Mr. Witty had to deal was the co-ordination of the profession. One advantage would be that the profession would be able to co-operate in the training of its students. He was very pleased to see present the Vice-Chancellor of Leeds University, as he felt sure that, sooner or later, the education of their profession would be linked with the Universities. He had often heard it said that the practical training in an accountant's office was one of the best ways of preparing for business, and no doubt that was the reason why so many of their members took public and commercial appointments.

They were also pleased to have with them Mr. Garrett, who had rendered such valuable service to the Society as secretary. They in Yorkshire appreciated the unfailing help which Mr. Garrett always rendered so willingly to the District Societies.

Mr. Richard A. Witty, replying to the toast, said that Presidents of the parent body found it a real pleasure to visit District Societies, not only because it provided an opportunity of making contact with members in the various Districts, but also because they could convey to the Council their impressions as to the views of the rank and file of the members. Frankly, the views of the rank and file were very important. One of the most important developments in the last week or two had been the appointment of the Company Law Amendment Committee. Many commercial and professional bodies had been collecting evidence over a period of years for presentation to such a Committee when appointed. It was quite possible that some of the proposals put forward would not be practicable for inclusion in a statute, but there was little doubt that a great many would be submitted which were considered essential by the business community for the safeguarding of investors and for the public interest. He had read recently many suggestions about the probable subjects the Committee would be called upon to consider, but he need not discuss them in detail. He thought, however, such subjects as prospectuses, nominee shareholders, balance sheets, and profit and loss accounts would be included and also the point raised recently by the Stock Exchange as to whether any methods could be devised whereby shareholders could have a more effective voice on any matter raised

by the board of directors which was outside the routine business. He thought that the Committee might take into consideration the whole question of a possible limitation of the limited liability principle, particularly in relation to the shareholding managers of a private company. It was interesting to note as a matter of history that the idea of giving limited liability to everybody who owned a share did not by any means meet with unanimous consent when the first Companies Act was passed. There were many people then who thought, and said that the limited liability principle should be applied only to those who invested their money without question of a voice in the control, and not to those who acted in a managerial capacity. He saw in *The Times* that a proposal was being made that there should be a permanent standing committee to review company law continuously, with a view to having an amending Act at more frequent intervals than in the past. That was an interesting suggestion, but accountants probably knew better than anybody that a proposed amendment was often based on transient circumstances and not on real necessity.

Referring to the steps which were being taken towards the co-ordination of the accountancy profession, Mr. Witty said it was not intended that there should be a hush-hush propaganda campaign. Many interests had to be considered and reconciled, and it was thought desirable to get as near agreement as possible before proposals were submitted to the members of the respective accountancy bodies. It was one of the essentials that the existing bodies should retain their identities intact, but it was desirable that the profession should be able to speak as one. Much work and considerable enquiry would be necessitated before such a desirable reform could find its way to the statute book.

After warning members not to expect too much from Taxation Committees and remarking, amid laughter, that accountants had a long way to travel before being able to say, if ever, that the Board of Inland Revenue were prepared to take the same view of taxation profits as the business house takes of commercial profits, Mr. Witty considered post-war problems affecting the accountancy profession in particular and the commercial world in general. He said it was the duty of the Council to see that future Incorporated Accountants were fully qualified to undertake the still more arduous duties which they would be called upon to perform in the post-war period. There was naturally a desire to assist those students whose intended careers had been disturbed by war conditions, but the Council would not countenance any reduction in the standard of qualification. Rather were they likely to insist upon a higher standard of knowledge of the principles and technique of accounting, although it might be necessary in some cases to reduce the period of practical training, which was normally considered of the first importance.

He took a very optimistic view of the general future of the Society and its members. Let them, like the nation as a whole, approach difficulties with confidence in ultimate and complete victory.

Mr. A. A. Garrett, Secretary of the Society of Incorporated Accountants, proposing "The Guests," referred to the valuable work of Mr. T. W. Dresser as honorary secretary of the Yorkshire District Society, and his keen personal interest in students. The Universities had rendered a valuable service to the profession by conducting the examinations for school

certificates, and the Council of the Society hoped that the school certificate would not disappear from educational practice.

The Vice-Chancellor of Leeds University (Colonel B. Mouat Jones, D.S.O.) replied to the toast. He said that for some inscrutable reason he had been selected for this honour as the one member of their grateful guests who had a grave lack of adequate education, a deplorable inexperience in finance and a disastrous emptiness of pocket, and, moreover, was completely incapable of contributing anything of value to the numerous problems which appeared from previous speakers to confront their profession. (Laughter.) Knowing, however, that he was about to eat their salt, admirably disguised, he felt he could find something about an accountant, so he looked the word up in a

dictionary. He was rewarded by this definition: "An accountant is one who counts." So he went further and looked up "incorporated." That, he found, meant "Without body or material existence." Well, since he looked at his hearers and thought of the lunch they had eaten, he did not believe it. (Laughter.) Putting the two words together he could only deduce that accountants were a set of calculating spooks. (Laughter.) He was deeply honoured at being the guest of such a vanishing body, to whom they owed so much or they did not owe much, since accountants were unwearied in pointing out those to whom they owed it, generally the collector of taxes. (Renewed laughter.)

Dr. G. H. Austin (Principal of Leeds College of Commerce) proposed the toast of "The Chairman," to which Mr. Starkie briefly replied.

TAXATION

Excess Rents

Prior to 1940-41, it was axiomatic that the Schedule "A" assessment exhausted the taxable capacity of lands and buildings let unfurnished and without services. The leading case was *Fry v. Salisbury House Estates, Ltd.* (1930, 15 T.C. 266). The position was anomalous in that the Crown could not assess excess rents, whereas the taxpayer could appeal in any year for a reduction (Section 26, Finance Act, 1923). The Finance Act, 1940, Sections 13-18, remedied the position in favour of the Crown, with the result that profit rentals are now assessable.

The legislation is wordy and not simple reading, and an attempt will now be made to give the effect of the Act in reasonably intelligible form.

Definitions

The definitions cannot safely be paraphrased and are, therefore, included practically *in extenso*:

Immediate lessor. (a) If different parts of the premises are the subject of separate tenancies or separate occupations, a lessor of the whole or any part of the premises whose estate or interest extends to the entirety of the premises and is not subject, immediately or mediately, to a lease of the entirety thereof. If there is more than one lessor satisfying these conditions, that one of those lessors shall be deemed to be the immediate lessor whose estate or interest is not reversionary on the estate or interest of any of the others.

(b) In any other case, a lessor whose immediate tenant is occupying or entitled to occupy the entirety of the premises.

Thus if A lets a house to B, who occupies it, A is the immediate lessor. If A lets a block of offices to B, and B lets to C, D, and E, who in turn let to F, who sub-lets in separate offices, F appears to be the immediate lessor, as his interest is not reversionary on that of any of the others, whereas both A's and B's interests are.

Long lease. A lease granted for a term exceeding 50 years, other than a lease which is or takes effect as a lease for a term of years determinable after the death or marriage of any person. If a lease granted for a term exceeding 50 years is determinable at the option of the lessor before the expiration of 50 years, it is not a long lease. The fact that it may be determinable earlier at the option of the lessee does not affect the matter.

Short lease. Any lease that does not satisfy the definition of a long lease.

The term "lease" does not include a mortgage, but it includes any tenancy, and the terms "lessee" and "lessor" include respectively the successors in title of a lessee or lessor.

If the estate or interest of any lessor is the subject of a mortgage and either the mortgagee is in possession or the rents and profits are being received by a receiver appointed by or on the application of the mortgagee, the estate or interest is deemed to be vested in the mortgagee, and the terms "lessor" and "lessee" are construed accordingly, but the liability to tax of the mortgagee is to be computed as if the mortgagor were still in possession of the premises or no receiver had been appointed, and as if it were the liability of the mortgagor that was being computed.

Short Leases

The method of arriving at the profit rental is as follows:

- (1) Ascertain the true rent receivable by reference to the rent actually payable and the other terms of the lease. If any part of the unit of assessment is occupied by the lessor, add the proportionate part of the gross annual value.
- (2) Deduct the repairs allowance and any other deductions allowable on a gross annual value equal to such a true rent.
- (3) Deduct the greater of—
 - (a) the net annual value for Schedule A, or
 - (b) any rent payable by the immediate lessor in respect of the same unit of assessment under any short lease(s).

This method applies only where (1) the lease is a short lease, (2) the land (including buildings) is or forms part of a single unit of assessment, (3) the rent is payable to the immediate lessor of that unit, and (4) the estate or interest of the immediate lessor is not, in respect of any part of the unit, subject to any short lease which comprises also land not wholly within that unit (being a lease the rent under which is payable to that immediate lessor).

Illustrations: (1) House let at 14s. 5d. per week inclusive, Net Annual Value £12.

	£	s.	d.
Yearly rental	37	10	0
Less rates and water	14	19	11
	22	10	1
Less Concessional 2 weeks' rent, say ...	1	0	1
	21	10	0
Repairs allowance $\frac{1}{4}$, say	5	10	0
	16	0	0
Net Annual Value	12	0	0
Excess Rent	4	0	0

(2) Main part let at £10 per month exclusive; one quarter occupied. N.A.V. £80; rent payable under a short lease £90.

Rent receivable	...	...	...	120	0	0
Occupied $\frac{1}{4}$ x £100 (G.A.V.)	...	...	...	25	0	0
				145	0	0
Repairs allowance	...	...	...	27	10	0
				117	10	0
Rent payable	...	...	...	90	0	0
Excess Rent	...	...	...	£27	10	0

If the immediate lessor has two units of assessment of which the tenant occupies one and part of the other, the above method does not apply unless there are separate leases in respect of the two occupations.

If a short lease does not come within the above category, e.g. a lease comprising more than one unit of assessment or an interest subject to a short lease comprising also land in another unit, the excess rent is computed by deducting from the rent receivable the aggregate of the following:

- (a) The higher of—
 - (i) The amount on which the lessor is liable to pay Schedule A tax, by deduction or otherwise; or
 - (ii) Any rent payable by the lessor under a short lease.
- (b) Any tenant's rates paid by him;
- (c) Any outgoings allowed under Rule 1 or Rule 4 of No. V, Schedule A, the burden of which falls on him (e.g. land tax, drainage rates, sea wall expenditure, etc.).
- (d) Any tithe annuity;
- (e) The cost of services rendered or goods provided (otherwise than by way of maintenance or repairs) under the covenants of the lease, for which he receives no separate consideration;
- (f) Any amount on which he has had relief for maintenance, repairs, etc. (on the usual five-years' average).

Illustration: (3) The intermediate tenant in illustration (2) would be charged as follows:

Requisition rent	...	...	...	£60
Add 15%	...	...	...	9
G.A.V.	...	...	...	69
Repairs allowance	...	...	...	14
N.A.V.	...	...	...	£55

The difference between the percentage addition and the repairs allowance has covered the wear and tear.

The Treasury have now stated that in calculating the compensation to be paid on de-requisitioning, they are

Rent receivable	£80
Rent taxed by deduction (N.A.V.)	60

Excess Rent	£20
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(4) A group of properties, each assessed separately, aggregating £200. The rent receivable £360, rates and water paid £65; maintenance relief for year of assessment £15.

Rent receivable	£360
Less Rates	65
N.A.V.	200
Maintenance	15
				280

Excess Rents	£80
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It should be borne in mind that any maintenance claim must have regard to the true rent and the repairs allowance thereon, and not to the gross annual value.

Long Leases

In the case of rents under long leases, and any other annual sum charged on any land (as to which see Rule 4 (2) of No. VIII, Schedule A), with the exception of tithe annuities, the charge to tax is now under Case VI, in so far as the rent or annual sum is not charged under any other case, and General Rules 19 and 21 apply as they apply to patent royalties. Any tax so charged is regarded, for the purposes of Sections 37 and 38, Income Tax Act, 1918 (i.e. relief from tax in the case of hospitals and other charities and the British Museum), as if it were charged under Schedule A.

Any payment made in respect of land in Scotland for the period ending on May 15 in any year is for this purpose regarded as if made at the commencement of the period (Section 24, Finance Act, 1941).

Illustration: (5) Premises held on a 99 years' lease at a rental of £50. The £50 is regarded as an annual charge from which tax is deducted on payment, subject to the General Rules 19 and 21.

Information

The Inspector of Taxes can give notice to any person entitled to any rent or other annual payment in respect of land, or in receipt of rent or such annual payment belonging to any other person, requiring him to deliver such particulars as are required, under the same penalties as any other return.

Taxation Notes

Requisitioned Property

Hitherto, the Government has not taken on the liability for fair wear and tear of requisitioned property, though assuming the liability for repairs. It has been the practice to add 10 or 15 per cent. (usually the latter) to the requisition rent to arrive at the gross annual value, e.g.:

Requisition rent	...	...	...	£60
Add 15%	...	...	...	9
G.A.V.	...	...	...	69
Repairs allowance	...	...	...	14
N.A.V.	...	...	...	£55

The difference between the percentage addition and the repairs allowance has covered the wear and tear.

The Treasury have now stated that in calculating the compensation to be paid on de-requisitioning, they are

prepared to take fair wear and tear into account under Section 2 (1) (b) of the Compensation (Defence) Act, 1939, where compensation is assessed strictly in accordance with Section 2 (1) (a), provided the compensation so assessed is expended in making good the damage. Where requisitioned property is under lease and the tenant is liable to the landlord for fair wear and tear, the wear and tear will not be included in compensation payable under Section 2 (1) (b) to the owner unless he has waived any claim thereof under the lease against his tenant. In future, therefore, it is expected that the compensation rent will be taken as the N.A.V. without any adjustment.

Adjusted Rents

Where owing to war damage or similar causes rents have had to be reduced, it is understood that the Revenue do not regard the reduced rent as a cause of appeal under Section 26, Finance Act, 1923, but will give concessional relief by reducing the net annual value in proportion to the reduction of rent.

Illustration. Net annual value £22 10s. 0d. Inclusive rent 16s. 6d. per week, reduced to 10s. per week, rates and water, £7 19s. 0d.

Concessional relief $\frac{6s. 6d.}{16s. 0d.} \times £22 10s. 0d. = £9 3s.$

reducing the assessment to £13 7s. 0d.

"Pay as you go"

The U.S.A. have now instituted the "Pay as you go" system of taxation of wages, facing up to the loss of the overlapping tax. This ultimate loss to the Treasury appears to be inherent in any scheme, but is probably more theoretical than real, since if wages were to fall seriously it is difficult to see how arrears could, in the main, be collected. Similar difficulties would follow on the death of the wage earner. As we have previously indicated, we shall appreciate any suggestions that readers can put forward for a suitable scheme for this country.

Recent Tax Cases

By W. B. COWCHER, O.B.E., B.Litt., Barrister-at-Law

Income-tax—Office or employment—Office created abroad—Seat of office in United Kingdom—Contributions from churches in United Kingdom and abroad and from foreign government—Whether foreign possession or office assessable, Schedule E.

Archbishop of Thyateira v. Hubert (C.A., May 12, 1943, T.R. 133), was noted in our issue of January, 1943. In the Court of Appeal the judgment of Wrottesley, J., was affirmed to the effect that the Archbishop did hold a public office within the United Kingdom and, therefore, fell to be taxed under Schedule E. The decision is, in view of the peculiar facts, of more interest than importance; and, in the writer's opinion, its most interesting feature was the finding by the Special Commissioners to which attention was drawn in the earlier notice, whereby they had held that voluntary contributions from the churches in the United Kingdom "must equally be deemed to come from a source abroad" and so to be liable only on remittances.

Sur-tax—Sale of shares to company controlled by vendor—Allotments of shares in consideration—Shares purchased by trustees of settlement created by vendor—Subsequent division of shares into classes—Purchase of shares by trustees of four new settlements made by vendor—Property comprised in the settlement—Finance Act, 1936, Section 21—Finance Act, 1938, Section 38, Section 41 (4) (d).

The case of *Chamberlain v. C.I.R.* (House of Lords, June 9, 1943, T.R. 161) was noted in our issues of January and October, 1942. The decisions in the lower courts followed *C.I.R. v. Morton* (Court of Session, March 28, 1941, T.R. 81), although in the Court of Appeal leave to appeal to the Lords was given by reason of one feature of the Scottish decision. In the House of Lords this point became of no real importance because their Lordships were unanimous that Section 38 (2) was fatally defective; and, in the words of Lord Macmillan, "The Legislature must try again, unless by legislation since 1938 it has already defeated such ingenuity as the appellants have displayed."

The essence of the judgments may be stated quite briefly. If company A has 1,000 shares and owns 470 shares in company B, then a settlement of 500 shares in company A is a settlement of shares and is not a settlement of property owned by either company, although both companies may be controlled by the settlor. To quote Lord Macmillan again: "But none

Remuneration disallowed under Section 32, Finance Act, 1940

It appears to be the general practice of the Revenue, where, in respect of a period prior to March 31, 1941, remuneration is disallowed under Section 32 and recovery of the additional E.P.T. cannot be enforced against the employee under Section 34, Finance Act, 1941, to give effect to the latter section in cases where the employee does in fact waive the excess remuneration.

Working Proprietors Disallowed

Where Section 35, Finance Act, 1941, is involved and a direction made that the appointment of an additional working proprietor is a transaction within the Section, so that he is not regarded as a working proprietor for the purposes of E.P.T., the direction invariably allows the remuneration paid as a deduction from profits, subject to its being limited to a reasonable amount within the meaning of Section 32, Finance Act, 1940.

of these settlements comprised any property of the Staffa Investment Company. The trust funds were invested in shares of that company, which is quite a different matter."

As a result, further legislation upon the subject may be expected; and, with regard to this, whilst in bygone days piracy did much for the good of naval architecture, it cannot be said that any such happy result has arisen in connection with tax legislation. The subject is one of extreme difficulty; but it would seem to be open to question whether, in lieu of the present elaborate network of sections and schedules, a more simple method of laying down and enforcing certain general principles could not be devised. The longer the chain, the more likely is there to be a weak link.

Income tax—Personal allowances—British subject not resident—Dominion income-tax relief—Inclusion of income not remitted—Income-tax Act, 1918, Schedule D, Case V, Rule 2; F.A., 1920, Sections 24, 27; F.A., 1927, Sections 38 (2), 40.

Mackillop v. C.I.R. (C.A., June 7, 1943, T.R. 145), was noted in our issue of February, 1943. In the King's Bench Division, Col. Mackillop had succeeded in establishing before Wrottesley, J., that Dominion income tax relief was one of the reliefs to which he was entitled under the proviso to Section 24 of F.A., 1920, but had failed in his argument that in computing his total income for the purposes of the proviso only remittances of income from foreign possessions should be taken into account. Both sides had appealed; but the Court of Appeal unanimously affirmed the judgment of Wrottesley, J. The Solicitor-General asked for leave to appeal to the House of Lords upon the ground that the decision would create enormous difficulties and had upset the practice of 22 years. It was refused.

The most remarkable feature of the case in the Court of Appeal was the tributes paid to the advocacy of Col. Mackillop, who again conducted his own case.

Income-tax—Unincorporated body for the purpose of providing choral concerts—Trusts of permanent character—Whether entitled to exemption as charity.

The case of *Royal Choral Society v. C.I.R.* (C.A., June 1, 1943, T.R. 137), was noted in our issue of February, 1943. In the Court of Appeal the judgment of

Macnaghten, J., was unanimously affirmed. The Master of the Rolls, with whose judgment Mackinnon, L.J. associated himself, and du Parcq, L.J., delivered interesting and important judgments upon the subject of music and the fine arts as educational factors. In Lord Macnaghten's classic judgment in *Special Commissioners v. Pemsel* (1891, A.C. 531, 3 T.C. 53), trusts for the advancement of education were set out as forming one of four principal divisions of "charity" in its legal sense; and the following are brief extracts from the Master of the Rolls' judgment in the present case:

"In my opinion, a body of persons established for the purpose of raising the artistic taste of the country, and established by an appropriate document which confines them to that purpose, is established for education purposes, because the education of artistic taste is one of the most important things in the development of a civilised human being. . . ."

"I cannot help thinking that the Board of Education, which has taken the Council for Encouragement of Music and the Arts under its wing, would be very surprised to

learn that that enterprise, in which public funds are now being used, was not an educative one."

Speaking of the purpose of an alleged charitable establishment, he said:

"the presence of the element of entertainment or pleasure may be either an inevitable concomitant of a charitable or educational purpose, or it may be the real fundamental purpose, and education may be merely a by-product," and this was a question of fact. Otherwise, the question of whether a body was a charity was a question of law. du Parcq, L.J., in the course of his judgment, dealing with the point last mentioned, remarked:

"It would be an unfortunate thing if preceptors and teachers in any department were told that they must realise that, the moment their teaching was found to be giving any pleasure and enjoyment to those who were under their instruction, they must know that they were failing in their duty."

The Solicitor-General's request for leave to appeal to the Lords was refused. The decision is one which will be warmly welcomed in musical circles.

Publications

The Law of Income Tax. By E. M. Konstam, K.C. Ninth Edition. (Stevens & Sons, Ltd., and Sweet and Maxwell, Ltd., London. Price £2 17s. 6d. net.)

Only two years have elapsed since the publication of the eighth edition of this standard work, but during that short period many changes have been effected in income tax law and practice. The position of farming in relation to income tax has been radically altered; farming on land of more than £100 annual value is assessed on the basis of profit and the remainder upon three times the annual value of the land. Schedule B is accordingly changed beyond recognition. The Finance Act, 1941, effected a reduction in tax-free payments related to the increase of tax to 10s. in the £, an enactment which has given considerable trouble to accountants, especially when dealing with trust accounts, and one which has already given rise to more than one decision of the Courts. Other provisions in that Act and in the Act of 1942 deal with post-war credits to correspond with reduced reliefs, with war damage and war injuries contributions, with arrangements for the concentration of industry and with a multitude of minor amendments in the law.

The Tenth Schedule of the 1942 Act makes numerous and notable changes in the procedure of assessment and collection. Some of these are temporary but all tend towards easing the administration of the Act, particularly from the point of view of the Revenue authorities. It will be remembered, too, that under Section 35 of the Finance Act, 1942, the Commissioners are given power to call for production of accounts and books in cases "where a person who has been duly required to deliver a statement of the profits or gains arising to him from any trade, profession or vocation fails to deliver the statement or where the Commissioners of Inland Revenue are not satisfied with the statement delivered by any such person." This is a radical extension of the old power to enforce production of accounts in the case of appeal. All these new provisions are embodied in this ninth edition and the author adds that "by a surprising section, a statement induced by a suggestion of pecuniary settlement is made admissible in a criminal proceeding as evidence against the person who was thus prompted to make it." This refers principally to back duty cases, and the author expresses the hope that such an enactment may never be treated as a precedent.

The book has been revised throughout and case decisions are included down to February, 1943. It is essentially a legal text book as distinct from a practice handbook. But every practising accountant needs this volume on his desk, and it must be further admitted, perhaps with regret in these days of high-priced books, that it is imperative to have the latest edition available.

Farm Book-keeping. Compiled by the Ministry of Agriculture and Fisheries. (H.M. Stationery Office, London. Price 6d. net.)

The Ministry of Agriculture and Fisheries has issued a companion booklet to "Farmers' Income Tax," intended to show the farmer a simple way of keeping records of his transactions. It is not intended for the farmer who keeps a full set of books on the double-entry system or who is advised by a professional accountant.

Frankly, we do not consider it as successful an effort as the companion booklet. The several instructions of steps to be taken—to find the profit, preparing the inventory, finding the debt position, making up the farm account, etc.—while each is explained, strike the reader as meaning a lot of work, which is just the reverse of the impression that is sought to be made on the farmer. Moreover, we doubt if, even with the preliminary illustrations, the farmer who knows nothing about book-keeping will quite grasp how his profit is made up from the statements:—

"The difference between your valuation at the end of the year and your valuation at the beginning . . . gives you part of your profit.

"The difference between your debt position at the end of the year and your debt position at the beginning . . . gives you another part of your profit.

"The difference between the money received from sales of your farm produce and the money spent on the farm gives you the remaining part of your profit.

"These three part profits added together give you the total profit for the year."

As parts 1 and 2, in particular, may be minus quantities, this is not exactly clear.

The booklet is aimed at enabling the farmer to arrive at the figures for Form 79D, which was reviewed in a Taxation Note in our June issue, and repeats much of the information in the companion booklet on income tax as to valuations, etc.

We welcome the booklet as a constructive attempt to make farmers "account minded," and if it results in the farmer's deciding that it will be easier to employ an accountant, so much the better.

FINANCE**The Month in the City****Brighter Markets**

The theory that the "Wings for Victory" weeks had much to do with the recent quietude of markets, while not a complete explanation, has this to support it: that the special drives of the National Savings Movement have siphoned off investment funds in the first half of each of the three past years. In 1941, when there were "War Weapons Weeks," and in 1942, when "Warships Weeks" were held up and down the country, it was left to the second half of the year to produce major rises in stock market quotations. It is, therefore, interesting to find that a distinct change in price trends has been shown this July. After Government securities had moved to higher levels, interest broadened to include a wide section of the investment field. The good war news cannot have been the only factor; after the North African success, markets disappointed by their somnolence, and the view then urged, that we are coming nearer to the time when industry will have to face important transition problems, certainly has no less force to-day. Allied action in the Pacific has assisted Australian loans and in narrow markets has brought about recovery in tin and rubber shares. On the other hand, the market in Brazilian bonds was dull on the implications of the scheme to pay off the debentures of the Companhia America Fabril at a depreciated exchange rate which would have produced only £42 5s. 9d. for every \$100 nominal; Treasury intervention to prevent the scheme being submitted to holders has been widely welcomed. So have the Board of Trade's successful endeavours to reach a gentlemen's agreement with members of the film trade precluding the establishment of a film monopoly.

Discount Market Capital

The war has brought important changes in the structure of the London discount market, which have on balance increased its available resources. In the earlier stages there were a number of amalgamations between individual units in the market, and a few firms discontinued business entirely. This process of concentration and contraction, which was favoured by the authorities, gave the impression that the market as a whole was getting smaller. Recently, however, this movement has been reversed. In the last few months no less than four firms have increased their capital. The additional finance has been provided from various sources, most of which are closely concerned with the operations of the discount market. United Dominions Trust, the hire purchase finance house, has acquired an interest in one firm. Two merchant banks have provided capital for another, and two insurance companies for a third. The immediate need for this fresh capital evidently arises out of the increased volume of Government paper which the market is now called upon to finance. The Treasury bill issue seems to have been stabilised at £90 million a week, twice its pre-war level, and in view of the unremunerative nature of this business the market is obliged to employ an unusually high proportion of its resources in running bonds. The fact that outside finance has been so readily forthcoming does, however, seem rather surprising at first sight. The market's function in the financing of international trade has almost disappeared during the war. It has in fact been relatively unimportant for many years, and the revival of the bill of exchange seems unlikely. The market remains an important link in the machinery for providing the Government with

short-term finance, but with the present margin between bill and money rates, it has to look for its profits in bond operations. It is these which appear to explain the fact that outside interests regard the discount market as a good investment. After the last war refunding operations by the Government provided a good opportunity for bond dealings, and this situation is no doubt expected to recur. Whether it will prove equally profitable remains to be seen. If cheap money is successfully maintained, there are likely to be far smaller fluctuations in interest rates. At all events there are institutional investors willing to back their judgment, and the result is a considerable expansion in a piece of financial machinery which many people were beginning to regard as an anachronism. At the moment only three firms in the market hold the status of public companies, but it would not be surprising if some of the recent capital increases led other concerns to adopt this status at a later stage.

Capital Control in India

The new Indian Government rule requiring official consent for capital issues provides further evidence of the difficulties caused by the growth of inflation in India. War expenditure has created purchasing power which has no counterpart in an increased supply of civilian goods, and the curtailment of imports has prevented its being spent on goods from overseas. Thanks to Great Britain's war expenditure in India, the country has wiped out its sterling indebtedness and accumulated huge sterling balances. These will be valuable in India in the reconstruction period after the war, but meanwhile they do nothing to ease the inflationary problem. This is reflected in all the financial indices, as well as in the events which have led the Indian Government to impose a control on new capital issues. One result of an abundance of money has been to foster the growth of mushroom companies which would have little chance of survival in more normal circumstances. It has also led to some over-hasty recapitalisation of existing concerns on the basis of their present exceptional war-time profits. The new control should limit these abuses, but it will not solve the fundamental problem. If the pressure of money is diverted from one outlet in the form of new capital issues, it will probably accentuate the rise in the prices of existing securities. The opening of the Pacific offensive has already led to an improvement in Indian security prices, both locally and in London, and if confidence is maintained the additional weight of money is quite likely to continue the process. Higher taxation and Government borrowing will mop up some of India's surplus purchasing power, but the difficulty of imposing direct physical controls in a country like India makes it impossible for the authorities to banish the danger of inflation as thoroughly as has been done in this country.

Nord Railway Drawings

It has recently come to light that annual drawings have been taking place in the 6 per cent. sterling bonds of Nord Railway. Indeed, the numbers of the bonds drawn in the last three years have been obtained through a neutral source by Messrs. N. M. Rothschild & Sons, the London agents, and published in the press. This has created a difficult problem of procedure for the Stock Exchange Committee. The drawings took place in enemy-occupied territory, and of course no money has been provided to meet the repayments. On the other hand, if these drawings are to be regarded as legally

valid after the war, it is clear that a distinction should now be made between drawn and undrawn bonds. The Committee has, however, taken what is probably the only course feasible in the circumstances, and waived the provisions of Rule 113 in the case of past and future dealings in the bonds. This rule lays down that bargains must be settled in undrawn securities, and the effect of the Committee's action is to make drawn and undrawn

Nord Railway bonds equally "good delivery." In practice any bargains in drawn bonds will, now that the numbers are available, probably be subject to special arrangements between the parties concerned, but the drawn bonds will have no official standing. If the drawings are subsequently honoured these bonds will, of course, have different interest rights from the undrawn bonds whose final redemption date is in 1950.

Points from Published Accounts

Associated Portland Cement

Substantial changes have been made in the method of presenting the accounts of the Associated Portland Cement Manufacturers. Perhaps the most important is the striking of trading profit before deduction of taxation. This charge is shown to have absorbed £498,500, a comparative figure of £542,500 being inserted in respect of the previous year. The amount stated compares with a net profit of £499,382; it is useful to have the relation between the two established, for the ratio of tax to bare net profits frequently tells the shareholders something about a company's E.P.T. liability or its policy in relation to the building-up of internal reserves. The profit and loss account, incidentally, is drawn up in single-column form; how much this contributes to the cause of clarity is a debatable point. For the first time provision is made in the accounts for the dividends paid out of the profits of the year, though these payments were actually made after the year-end. In the balance sheet the assets and liabilities have been grouped under appropriate headings. Previously a reserve for taxation and contingencies was included, at £1,226,819, with sundry creditors. Now, however, the contingencies reserve, shown to amount to £75,000, has been segregated while the tax reserve has itself been split into two, a £714,625 provision being included under the heading of current liabilities and provisions and a reserve of £589,568 in respect of the 1943-44 liability being grouped with capital and reserves.

Provincial Cinematograph Theatres

Another company to make important changes in its accounts is Provincial Cinematograph Theatres. The alterations effected come as a reminder of the changes in the control of the Gaumont-British group, to which this company belongs. A consolidated balance sheet is submitted for the first time, and the profit and loss account shows the earnings of the group and the retentions of the subsidiaries instead of being concerned only with the experience of the parent company. All this is to the good, but it is a pity that the combined trading profit should be shown after deducting an undisclosed amount for deferred repairs, which in 1941-42 was stated at £20,000 for the parent company alone, and after providing for E.P.T. The group provision for income tax is £354,510, whereas a year ago the parent company itself allocated £174,639 for E.P.T. and income tax. One interesting point is that allocations to the debenture sinking fund have been discontinued on the ground that provisions made for depreciation and amortisation largely exceed the amount required for repayment of the debenture stock. The previously existing fund of £118,941 has been transferred to general reserve, which has also received £27,084 from profit and loss. An amount equivalent to these two accretions has, however, been withdrawn to provide the balance of income tax assessable on profits earned up to the close of the financial year to January, 1942. This has enabled the income tax provision made out of

1942-43 profits to take up the burden of income tax on current earnings assessable in the fiscal year 1943-44. Provisions for taxation are shown in the consolidated balance sheet at £960,409 with reserves for income tax, 1943-44, and deferred repairs figuring as another item of £308,088. It would be an improvement to have the deferred repairs reserve segregated from the reserve for future taxation.

The Powell Duffryn Group

When Powell Duffryn Associated Collieries was formed in 1935 to take over the assets and undertakings of Powell Duffryn Steam Coal and Welsh Associated Collieries, its equity capital was made to consist of two participation shares of £1 each. The "A" share, held by Powell Duffryn Steam Coal, is entitled to two-thirds of surplus profits up to £450,000, and the "B" share, allotted to Welsh Associated, to the remaining one-third, any excess being divided equally. As the former company held one-half of the ordinary capital of the latter, its stake in the fortunes of the operating concern has, however, always been more important than a two-thirds interest. Recently, it has been increased through the acquisition of the balance of Welsh Associated's ordinary capital and the whole of that company's preferred capital. As a result, Powell Duffryn Steam Coal's issued ordinary capital has been raised from £5,266,275 to £7,121,795, while direct public interest in Welsh Associated's total capitalisation of £8,159,473 is now limited to the £1,250,000 of preference stock. Despite these important changes in the financial organisation of the group, the accounts submitted this time consist as usual of separate statements for Powell Duffryn Steam Coal, Powell Duffryn Associated and Welsh Associated. These have the merit of showing that, while Powell Duffryn Steam Coal is distributing profits fully in paying a 7½ per cent. dividend, an amount equivalent to a further 4½ per cent. has been retained within the business through additions which the operating company has made to reserve and carry-forward. This can, however, be only a partial indication of the true position, for the operating concern has many subsidiaries, and these also may have established reserves from the year's earnings. Indeed, it is known that one of these subsidiaries, Stephenson, Clarke & Co., added £110,495 to its reserve and carry-forward in 1941-42, this being equivalent to another 3 per cent. on Powell Duffryn Steam Coal's ordinary capital. The operating concern's holdings in subsidiaries have, incidentally, been lately increased by the acquisition of the business of Cory Brothers & Co. for a cash payment of approximately £1,750,000. They amount now to £5,937,683. On account of the greater importance which these holdings have acquired, the group might well consider the publication, in place of the present three-decker report, of a consolidated balance sheet and a consolidated profit and loss account—documents which there should be no difficulty in preparing now that Powell Duffryn Steam Coal has such a dominating interest in the operating enterprise.

LAW**Legal Notes****COMPANY LAW**

Companies Act, 1929, Sections 115 (1) and 117 (1)—Trading with the Enemy Act, 1939—No service on shareholders in enemy-occupied country—Reduction of capital.

In *re Anglo-International Bank, Ltd.* (1943, W.N. 140), the Court of Appeal, allowing an appeal from Bennett, J., confirmed a resolution for the reduction of the company's capital in unusual circumstances. The company was incorporated under the Companies Acts in 1926 with a capital of £2,000,000, divided into 2,000,000 shares of £1 each of which 1,960,008 had been issued. At an extraordinary meeting in February, 1943, under Section 117 (1) of the Companies Act, 1929, a special resolution was passed for the reduction of the company's capital to £1,509,998, divided into 1,960,008 shares of 15s. each and 39,992 shares of £1 each, by repayment of 5s. a share, and thereafter for the increase of the capital to its former amount of £2,000,000 by the issue of 490,002 new shares of £1 each. The resolution was passed unanimously by shareholders present or voting by proxy who held in aggregate 1,802,406 shares; there were, however, 99 shareholders, holding 46,552 shares, who had not been served with notice of the meeting either personally or by post to their registered addresses as required by the articles of association, because their registered addresses were in enemy or enemy-occupied countries, including Poland, France, Holland and Belgium. Had they been present and voted against the resolution, the result of the voting would have been the same. On the company's petition for confirmation of the reduction, Bennett, J., held that, in view of the requirement of Section 115 (1) as to giving notice of meetings to every member of the company, the special resolution had not been validly passed, and he dismissed the petition. The Court of Appeal held that, although it was not safe to hold on the evidence in the case of all the enemy-occupied countries that residents in them were all enemy aliens at common law, yet in all cases they were enemies within the meaning of Section 2 (1) (a) of the Trading with the Enemy Act, 1939. As a result of that Act the company were forbidden to have any communication with the 99 shareholders. It would be an offence to post letters to them, and therefore their contracted right to receive notice of meetings was suspended. Although licences might have been obtained from the Board of Trade to communicate with those shareholders, the company was under no obligation to obtain them. The resolution for the reduction of capital was, therefore, confirmed.

INSOLVENCY

Bankruptcy Act, 1914, Section 5 (2) and Bankruptcy Rules, 1915, R. 171—Receiving Order—Admission of debt—Affidavit of proof.

Because bankruptcy proceedings are such that they entail the performance of a public duty by the Court, details of procedure must be more strictly observed than in ordinary civil actions. There must be supervision to prevent collusion between the parties, and therefore strict proof is often necessary. Thus, an admission of the debt of the petitioning creditors will not suffice without an affidavit by them that the debt is due and owing. Where there are no special circumstances (e.g., when the debt is due in money-lending transactions) and the affidavit is not produced at the hearing, the petitioners may be given the opportunity of filing the affidavit on the same day. Ordinarily, the affidavit should, of course, be filed before the hearing. In *Re A Debtor* (No. 27 of 1943), the petitioning creditors had not, at the time of an application for a

receiving order, produced the usual affidavit that the debt was owing. At the hearing the debtor admitted it was owing. Without adjourning the hearing for the production of an affidavit, the registrar made an order on the undertaking by the petitioning creditors' solicitor to file an affidavit of the debt the same day. The affidavit was so filed. It was contended for the debtor that that procedure was technically wrong, in that there had not been compliance with Section 5 (2) of the Bankruptcy Act, 1914, and Rule 171 of the Bankruptcy Rules, 1915. The Court of Appeal held that, if the debtor admits the debt and has not served notice to dispute it, the admission can be admitted as proof so as to satisfy the Section. The appeal against the receiving order was, therefore, dismissed.

EXECUTORSHIP LAW AND TRUSTS

Gift of real estate contracted to be purchased—Vendor's lien—Administration of Estates Act, 1925, Section 35.

By Section 35 of the Administration of Estates Act, 1925, a devisee takes property subject to the charges upon it unless the testator has expressed a contrary intention. To show a contrary intention, it is not enough that the testator has clearly ear-marked certain money for that payment during his lifetime, because thereby no intention is shown how the charge was to be borne after his death as between his residuary estate and the specific devisee. The facts relied on to show a contrary intention must specifically refer to the manner in which the charge has to be borne after the testator's death as between the parties entitled under the will. In *Re Wakefield* (1943, 2 All E.R., 29), the testator made his will in April, 1939, and devised his real estate (if any) to his nephew W. absolutely. At that time the testator owned no disposable real estate. On July 14, 1941, he contracted to purchase a freehold property for £5,475 and paid a deposit of 10 per cent. Two days later he instructed his stockbrokers to sell certain stock which he owned. On July 31, 1941, he asked his stockbrokers for payment of the proceeds of the sale of stock to be made by two cheques payable to himself, one for £4,927 10s., and the other for £1,743 19s. 6d.

On the same day he wrote to his solicitors referring to the property and enclosing the cheque for £4,927 10s., stating: "Cheque enclosed for balance of payment money. Please own receipt. There will be some small adjustments to be made, but that can be done on completion." On August 3, 1941, the testator died before completion of the contract of sale. The devisee claimed that the amount of the cheque should be applied to the payment of the balance of the purchase price of the property and that he was entitled to the property free from the vendor's lien. The Court of Appeal, upholding the decision of Farwell, J., held that the letter of July 31, 1941, contained no "contrary or other intention" within the meaning of Section 35 of the Administration of Estates Act, 1925; therefore the appellant took the property devised subject to the vendor's lien for the unpaid purchase money.

Charitable trusts—Gift for benefit of staff training college fails.

Testators must either make gifts which take effect within the perpetuity period, or else ascertain that the object of the trust is a legal charity. In *Re Leverhulme* (1943, 2 All E.R. 143), the late Lord Leverhulme, by his will, had given certain shares to be held by his trustees in trust for the benefit of the Staff Training College of Lever

Brothers, Ltd., of Port Sunlight, in such manner as the trustees should think fit. The College was carried on in the company's building for educating their employees only; attendance was compulsory and during working hours. Formerly it was staffed by officials of the company, but of late years the company engaged three whole-time professional teachers. In addition to improving the education of the staff, the College served the company through its records and advice in placing young employees in suitable positions. Morton, J., held that the gift was not charitable; further, as it could not be construed as a gift to the company, it fell into residue. Had the gift been for purely educational purposes, it would have been valid. There were, however, features of this trust incompatible with charity in the legal sense. The actual beneficiaries would have been the employees of a commercial company who received education during normal working hours. Classes were adapted to training the company's more skilled employees and were of commercial advantage to the company.

Will—Condition contrary to public policy—"If his present wife be alive and married."

The sanctity of the marriage bond and the integrity of family life are matters of public policy. Any bequest which tends to encourage an invasion of that sanctity is invalid. The strictness of the rule was exemplified in *Re Caborne* (1943, W.N. 127). By her will, made in

April, 1935, the testatrix gave the residue to her son absolutely "provided that if his present wife shall still be alive and married to him, the absolute gift to him shall be modified in such manner that he shall have an interest for his life only, but so that if at any time during the life of my said son his said wife shall die or his said marriage be otherwise terminated, the absolute gift shall take effect as and from such event." In September, 1935, the son separated from his wife; the testatrix died in 1937 and the son died in 1941. In support of the conditional gift it was contended (1) that as the legislature had provided the remedy of divorce, it could not be against policy that a husband or wife should pursue such remedy; (2) that in any case, where the parties were in fact separated, it was not against public policy to make provision for the contingency of future divorce. Simonds, J., in declaring the condition attached to the absolute gift invalid, said the argument (1) was fallacious, as the remedy of divorce was only in default of a better cure. Both the positive duty of reconciliation and the danger of a provision discouraging reconciliation were obvious. An inducement, by the promise of material gain, to take advantage of the statutory relief of divorce, must be invalid. The fact that the parties were separated was immaterial. Separation was in no way final and often ended in reunion. To make provision for divorce was an invitation to commit a matrimonial offence, or at least to bar reconciliation.

Society of Incorporated Accountants

EXAMINATION IN PRISONER OF WAR CAMP

Lance-Corporal Ronald Ernest Coel, who is a prisoner of war in Germany, has been successful in passing the Society's Intermediate Examination held in December, 1942. The congratulations of the Council of the Society have been sent to him. Lance-Corporal Coel is normally with Messrs. Nicholson, Beecroft & Co., London.

COUNCIL MEETING

WEDNESDAY, JULY 21, 1943

Present :—Mr. Richard A. Witty (President) in the Chair, Mr. F. J. Alban, Mr. R. Wilson Bartlett, Mr. R. M. Branson, Mr. J. Paterson Brodie, Mr. W. Norman Bubb, Mr. E. Cassleton Elliott, Mr. M. J. Faulks, Mr. Alexander Hannah, Mr. Walter Holman, Mr. Henry Morgan, Mr. Bertram Nelson, Mr. T. Harold Platts, Mr. F. A. Prior, Mr. R. E. Starkie, Mr. Percy Toothill, Mr. Joseph Turner and Mr. A. A. Garrett (Secretary).

Apologies for non-attendance were received from Mr. Fred Woolley (Vice-President), Mr. A. Stuart Allen, Mr. C. Percy Barrowcliff, Mr. Robert Bell, Mr. W. Allison Davies, Sir Thomas Keens, Mr. Edmund Lund, Mr. C. Hewetson Nelson, Mr. James Paterson, Mr. Joseph Stephenson and Mr. A. H. Walkey.

DEPARTMENTAL COMMITTEE ON COMPANY LAW

The Council received a report of the appointment by the President of the Board of Trade of a Departmental Committee on Company Law under the chairmanship of Mr. Justice Cohen, and took steps for the preparation of evidence on behalf of the Society.

VISIT OF THE PRESIDENT TO LEEDS

The President made a report to the Council of his visit to the Yorkshire District Society, Leeds, when he met the President of the Yorkshire District Society, Mr. R. E. Starkie, and the Committee, and was afterwards entertained to luncheon by the members.

RESIGNATIONS

The following resignations of membership were accepted with regret :—

Ball, H. J. (Fellow), Exeter.
Dunsford, M. J. (Fellow), Exeter.
Fawcett-Peck, S. (Associate), Bloemfontein.

Latto, A. (Associate), Hoylake, Ches.
Tyrrell, D. W. (Associate), Eastbourne.
Wales, C. (Associate), Llanblethian, Glam.

DEATHS

The Secretary reported the death of each of the following members :—

Beswick, Ernest Morley (Associate), London. (*Killed by enemy action*).
Bicker, Edward (Fellow), Bournemouth.
Clement, Donald Jack (Associate), Bristol. (*On Active Service*).
Dufton, Gladys (Associate), Bradford.
Hall, James (Associate), Oldham.
Kershaw, Clifford Allan (Associate), Bromley.
Naylor, William (Associate), Aylesbury.
Plummer, Wilfred Thomas (Fellow), Luton.
Wright, Edward Alfred (Fellow), Bromley.

The Council, having received advice of the regretted death of Mr. Edward Bicker, Bournemouth, recorded that he was the last surviving original member of the Society. Mr. Bicker became a foundation member when the Society was established in 1885.

DISTRICT SOCIETIES AND BRANCHES

IRISH BRANCH

The fortieth annual general meeting of the Society of Incorporated Accountants in Ireland was held in Dublin on June 23. The President, Mr. William L. White, F.S.A.A., was in the chair.

The report and accounts for the year ended March 31, 1943, were adopted. The membership in Ireland now totals 234 and there are 261 students. In the Preliminary Examination held in July, 1942, Mr. Ernest McMurtry, of Larne, Co. Antrim, was awarded Second Place Certificate.

The retiring members of the Council were unanimously re-elected, as also was Mr. T. Condren Flinn, the Honorary Auditor.

At the conclusion of the meeting, Mr. Robert Bell (Belfast), in proposing a vote of thanks to the outgoing President, referred to his distinguished services during the last three years. The vote of thanks was carried by acclamation.

At a Council meeting held subsequently, the following

officers were elected: President, Mr. D. Tilfourd Boyd, B.Com.Sc., Belfast; Vice-President, Mr. A. J. Walkey, Dublin; Hon. Treasurer, Mr. R. L. Reid, Dublin; Hon. Secretary, Mr. A. J. Walkey, Dublin; Assistant Hon. Secretary, Mr. J. Love, Dublin.

BELFAST

Annual Report

The total membership of the Belfast Society is 230, including 110 members and 120 students.

Three well-attended lectures were held during the year.

At the request of the Belfast Chamber of Commerce, the Committee gave its opinion on the advantage of having S.R. & O., 1927, No. 480 (England), made applicable to Northern Ireland. The effect would be that certain plant and machinery at present included in the valuation of factory premises would be excluded.

The Committee has been in communication with the local Farmers' Union on the alterations in the income tax assessments on farmers, and a list of all practising members was submitted for the information of the Union.

The District Society is represented on the Ulster Tourist Development Association by Mr. Samuel Boyle, on the Belfast Chamber of Commerce by Mr. J. D. Thompson, on the Belfast Court of Referees Appeal Tribunal Panel by Mr. J. A. Winnington, on the Price Regulation Committee by Mr. E. A. Anderson, and on the Belfast War Savings Committee by Mr. H. McMillan.

The Committee have noted with interest the proposals for co-ordinating the practice of public accountancy in Great Britain. Any development will be carefully watched by the Committee, having regard particularly to the position in Northern Ireland.

SOUTH WALES AND MONMOUTHSHIRE

Mr. E. Ewart Pearce has been elected President of the South Wales Society, and Mr. J. Wallace Williams Vice-President.

Annual Report

Social and educational activities were restricted owing to the war. Lectures were delivered by Mr. H. A. R. J. Wilson, F.S.A.A., F.C.A., at Cardiff on October 1, 1942, and at Newport on March 31, 1943. The attendance at both was satisfactory.

It is recorded with regret that one student was killed on active service. The Committee expresses its pride and gratitude at the large number of members and students who are serving with H.M. Forces.

YORKSHIRE

Annual Report

The Committee reports a favourable year's work, though war conditions have again restricted the District Society's activities.

The membership has increased from a total of 552 (368 members and 184 students) on March 31, 1942, to 587 (372 members and 215 students). Eighteen members and 121 students are serving with H.M. Forces. The Committee regrets to record the death of Mr. Alfred Walton, a past President, and Mr. N. M. Parkin.

Two students passed the Final Examination and seven the Intermediate. Mr. N. Kirkman was awarded the Sir James Martin Memorial Exhibition.

SCOTTISH NOTES

Estate Duty: Status of Home Guardsman

An important Revenue case was decided on July 12 by a majority of two to one in the Second Division, Court of Session. Major Mirrieles of Garth, Aberfeldy, was killed by a hand-grenade explosion while on duty as a Home Guard company commander, and at the time of his death he was possessed of estate of approximately £300,000. The estate had already been conceded relief in respect of the manner of death under the Finance Act, 1924, the amount so conceded being £42,000. The question now raised was whether Major Mirrieles died in the service of His Majesty as a common soldier within the meaning of the Finance Act, 1924, and other Acts giving the exemption from estate duty.

The Lord Justice Clerk (Lord Cooper), with whom Lord Jamieson concurred, said that Parliament for over a century had used one form of words to describe the rank and file of the Regular Forces and another to describe the members of

part-time forces, and that the latter had no claim to complete exemption from estate duty.

Against the majority decision in favour of the Inland Revenue, Lord Mackay held that while a Home Guardsman was on duty in the defence of the country he was a soldier acting under orders which overrode any civilian duties.

PERSONAL NOTES

Mr. Arthur Thatcher, F.S.A.A., formerly Borough Treasurer of Stockport, has been appointed Borough Treasurer of Bournemouth.

The firm of Thornton, Walker, Wallis & Durringer, Chartered Accountants, has been dissolved by mutual consent. Mr. C. L. Walker, Chartered and Incorporated Accountant, continues to carry on the London portion of the practice at 4, Berners Street, W., for his own account under the style of Thornton, Walker & Co., while the remaining partners continue in partnership at 54, Caste Street, Liverpool, under the style of Thornton & Co.

REMOVALS

Messrs. W. G. A. Russell & Co., Incorporated Accountants, announce that their offices have been removed to 12, Waterloo Street, Birmingham.

Mr. John N. Brown, Incorporated Accountant, and Messrs. Haydon & Fry, Incorporated Accountants, have removed their offices to Central Chambers, Princess Square, Plymouth.

OBITUARY

BRUCE WILLIAMS HOLMAN

We now learn with regret that the body of Temporary Paymaster Lieutenant Bruce Williams Holman, R.N.V.R., who was reported "Missing, presumed killed" when his ship, H.M. Minelayer "Welshman," was lost in the Mediterranean in February, has been recovered from the sea and was buried at Alexandria on May 4. Lieutenant Holman was the only child of Mr. Walter Holman, a Past President of the Society, and was educated at The Leys School, Cambridge, and on the Continent. He was articled to Mr. D. F. Goode, F.C.A., F.S.A.A., a partner in Messrs. Barton, Mayhew and Co., and in 1938 passed the Intermediate Examinations both of the Society and of the Institute. On the outbreak of war he was mobilised in the R.N.V.R. and for some months served on shore until his appointment to the ship in which he served to the end.

For some years he was a member of the Committee of the Incorporated Accountants' Students' Society of London.

He will be much missed by his friends in the profession, who extend their sympathy to his parents. We much regret the loss of one of such high personal and professional promise. The available details of his death record great courage and sacrifice and the highest traditions of the Royal Navy.

PETER FRANK HICKLING

We record with regret that Acting Squadron-Leader Peter Frank Hickling, D.F.M., is officially presumed to have been killed in action in November, 1942, when he did not return from a night bombing raid over Germany. He was 29 years of age. After serving articles with Mr. Stanley Blythen, O.B.E., F.S.A.A., Nottingham, he passed the Final Examination of the Society of Incorporated Accountants in November, 1938, but relinquished his professional career to join the R.A.F.V.R. He was awarded the Distinguished Flying Medal for his service as a sergeant pilot in night bombing raids over enemy territory. Later he received a commission and was appointed as a flying instructor, but ultimately rejoined an operational squadron.

WILLIAM NAYLOR

We regret to record the death, on June 21, of Mr. W. Naylor, A.S.A.A., Borough Treasurer of Aylesbury. Mr. Naylor was 53 years of age. He became a member of the Society of Incorporated Accountants in 1926, after a long period of years in the Treasurer's Department of Halifax, and shortly afterwards was appointed Borough Accountant of Aylesbury. The national savings movement in Aylesbury and district owed much to the work of Mr. Naylor, who served on the local committee and had acted as treasurer of the War Weapons Week and a delegate to regional conferences. He was a popular member of the Aylesbury Literary Institution Club.